



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **INCOME TAX APPEAL NO. 240/2014**

% **Reserved on: 28th October, 2014**

Date of Decision: 18th November, 2014

DIRECTOR OF INCOME TAX (EXEMPTION) Appellant
Through Mr. Kamal Sawhney, Sr. Standing Counsel.

Versus

M/S INDRAPRASTHA CANCER SOCIETY Respondent
Through Ms. Shashi M. Kapila, Mr. R.R. Maurya and
Mr. Pravesh Sharma, Advocates.

INCOME TAX APPEAL NOS. 348/2014, 463/2014, 464/2014

DIRECTOR OF INCOME TAX (EXEMPTION) Appellant
Through Mr. Kamal Sawhney, Sr. Standing Counsel.

Versus

M/S SANSKRITI EDUCATIONAL SOCIETY Respondent
Through Nemo.

INCOME TAX APPEAL NO. 406/2014

DIRECTOR OF INCOME TAX (EXEMPTION) Appellant
Through Mr. Kamal Sawhney, Sr. Standing Counsel.

Versus

M/S ABUL KALAM AZAD ISLAMIC AWAKENING
..... Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO



SANJIV KHANNA, J.:

This common order, in relation to the aforesaid appeals, is on the point of admission. It is noticeable that in the case of M/s Sanskriti Educational Society, ITA Nos. 463/2014 and 464/2014, the appeals filed by the Revenue are belated and applications have been filed for condonation of delay. In these two appeals and ITA No. 348/2014 filed against M/s Sanskriti Educational Society, notice has not been served on the said respondent, but as we were inclined to dismiss the Revenue's appeals, we have heard arguments on behalf of the Revenue. In ITA 240/2014 and ITA 406/2014, the respondents i.e. M/s Indraprastha Cancer Society and M/s Abul Kalalm Azad Islamic Awakening, have been duly served.

2. The respondent-assesseees are charitable institutions to whom Sections 11 to 13 and other relevant provisions of the Income Tax Act, 1961 (Act, for short) apply. The issue raised in the present appeals is whether a charitable institution, which has purchased capital assets and treated the amount spent on purchase of the capital asset as application of income, is entitled to claim depreciation on the same capital asset utilised for business. Revenue submits that this would amount to double deduction.



3. This High Court in *Director of Income Tax versus Vishwa Jagr Mission* (2013) 262 CTR 558 has held that the claim for depreciation should be allowed as per principles relating to commercial accountancy, when computing business income. Reliance placed by the Revenue on the decision of the Supreme Court in *Escorts Limited versus Union of India*, (1993) 199 ITR 43 (SC), was dispelled and distinguished. In *Escorts Limited (supra)* the claim for depreciation under Section 32 of the Act was denied as the entire expenditure on the capital asset had been allowed under Section 35(2)(iv) of the Act while computing business profit and loss. Secondly, the Supreme Court was not concerned with the case of a charitable trust/institution, and the question as to whether income under the head “profits and gains of business” should be computed on commercial principles in order to determine the amount of income available for application for charitable purposes. Decisions of other High Courts in *CIT versus Sheth Manilal Ranchhoddas Vishram Bhavan Trust*, (1992) 198 ITR 598 (Guj.), *CIT versus Raipur Pallottine Society*, (1989) 180 ITR 579 (MP), *CIT versus Society of the Sisters of ST. Anne*, (1984) 146 ITR 28 (Kar.), *CIT versus Trustee of H.E.H. the Nizam’s Supplemental Religious Endowment Trust*, (1981) 127 ITR 378 (AP) and *CIT versus Rao Bahadur Calavala Cunnan Chetty Charities*, (1982) 135 ITR 485



(Mad.) were referred to in affirmation of the legal ratio. It was, inter al

held:-

“11.The only question is whether the income of the assessee should be computed on commercial principles and in doing so whether depreciation on fixed assets utilised for the charitable purposes should be allowed. On this issue, there seems to be a consensus of judicial thinking as is seen from the authorities relied upon by the CIT(Appeals) as well as the Tribunal. In CIT vs. The Society of the Sisters of St. Anne (Supra), an identical question arose before the Karnataka High Court. There the society was running a school in Bangalore and was allowed exemption under Section 11. The question arose as to how the income available for application to charitable and religious purposes should be computed. Jagannatha Setty, J. speaking for the Division Bench of the Court held that income derived from property held under trust cannot be the “total income” as defined in Section 2(45) of the Act and that the word “income” is a wider term than the expression “profits and gains of business or profession”. Reference was made to the nature of depreciation and it was pointed out that depreciation was nothing but decrease in the value of property through wear, deterioration or obsolescence. It was observed that depreciation, if not allowed as a necessary deduction for computing the income of charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. The circular No.5-P (LXX-6) of 1968, dated July 19,1968 was reproduced in the judgment in which the Board has taken the view that the income of the trust should be understood in its commercial sense. The circular is as under:-

“Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word ‘income’ should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purpose of the



trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax u/s. 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent. Of the latter, if the trust is to get the full benefit of the exemption u/s. 11(1).”

4. Accordingly, the appeal was dismissed after observing that no contrary judgment has been brought to the notice of this Court.
5. The High Court of Kerala in *Lissie Medical Institutions versus Commissioner of Income Tax*, (2012) 348 ITR 344 (Ker) has taken a different view, inter alia, holding as under:-

“5. It is settled position through several decisions of High Courts and Supreme Courts that when business is held in trust by charitable institutions income from business has to be computed by granting deductions provided u/s 30 to 43D as provided under S.29 of the Income Tax Act.

6. Senior counsel Sri.A.K.J.Nambiar appearing for the assessee submitted that the assessee has been filing income tax returns for several years including the assessment year 2005-2006, and disallowance is made only for this year. Since business income has to be as stated in S.29 by granting all deductions provided u/s 30 to 43D which includes depreciation u/s 32, assessee is entitled is the case pressed before us by the Senior counsel appearing for the assessee. We have no doubt in our mind that business income of charitable trust also has to be computed in the same manner as provided u/s 29 of the Income Tax Act.



However, the issue that requires consideration is when the expenditure incurred for acquisition of depreciable assets itself is treated as application of income for charitable purposes u/s 11(1)(a) of the Act, should not the cost of such assets to be treated as nil for the assessee and in that situation depreciation to be granted turns out to be nil. However, if depreciation provided is claimed on notional cost after the assessee claims 100% of the cost incurred for it as application of income for charitable purposes, the depreciation so claimed has to be written back as income available. In fact, going by the several decisions of the various High Courts, we are sure that based on these decisions all the charitable institutions will be generating unaccounted income equal to the depreciation amount claimed on an year to year basis which is nothing but black money. This aspect is not seen considered in any of these decisions. We, therefore, sought the views from the Central Board of Direct Taxes. Senior Standing counsel Sri.P.K.R.Menon, appearing for the Revenue produced clarification obtained from the Central Board wherein they have stated as follows:

"The Central Board of Direct Taxes is of the considered view that where an assessee has acquired an asset through application of income and has also claimed this amount as expenditure in its income expenditure account, depreciation on such asset would not be allowable to the assessee. Such notional statutory deductions like depreciation, if claimed as deduction while computing the income of the 'the property held under trust' under the relevant head of income, is required to be added back while computing the income for the purpose of application in the income expenditure account. This would imply that a correct figure of surplus from the trust property is reflected in the Income & Expenditure account of the trust to determine the income for the purpose of application under section 11 of the Income Tax Act. This would reduce the



possibility of revenue leakage which may be a cause for generation of black money.”

6. Noticing the aforesaid judgment as well as circular/clarification dated 2nd Feb, 2012 issued by the Central Board of Direct Taxes, a Division Bench of this Court re-examined the entire issue in ITA No. 7/2013, ***Director of Income Tax (Exemption) versus Indian Trade Promotion Organisation***, and other connected matters, decided on 27th November, 2013. The said order records that the Bench was initially inclined to accept the submission made of the Revenue, but for several reasons mentioned and recorded, declined to interfere and refer the question/ ratio accepted in ***Vishwa Jagriti Mission*** (supra), to a larger bench. This Court referred to the following example to explain the controversy in question:-

“5. ... In order to appreciate the contention raised by the Revenue, we would like to give one example which would clarify the contention or the issue raised before us. An assessee, a charitable institution, say has income from property held under Trust of Rs.1,00,000/-. As per mandate of clause ‘a’, 85% of the said amount i.e. Rs.85,000/- should be spent in the said financial year. The said assessee spends and acquires a capital asset for Rs.50,000/-. The purchase price for acquisition of the capital asset i.e. Rs.50,000/- is treated as application of income for the purpose of clause ‘a’ to Section 11(1). On the capital asset, the assessee also claims depreciation say @ 20%. Accordingly, the assessee claims that the application of income would include Rs.10,000/- which is to be allowed as depreciation as to this extent, the asset purchased has depreciated. In other words, Rs.60,000/- is to be treated as application of money for the purpose of clause ‘a’ to Section 11(1).”



Thereafter, reference was made to the following quotation from the

judgment of the Karnataka High Court in *Society of the Sisters of St. Anne*

(supra) :-

“It is clear from the above provisions that the income derived from property held under trust cannot be the total income because s. 11(1) says that the former shall not be included in the latter, of the person in receipt of the income. The expression " total income " has been defined under s. 2(45) of the Act to mean " the total amount of income referred to in s. 5 computed in the manner laid down in this Act ". The word " income " is defined under s. 2(24) of the Act to include profits and gains, dividends, voluntary payment received by trust, etc. It may be noted that profits and gains are generally used in terms of business or profession as provided u/s. 28. The word " income ", therefore, is a much wider term than the expression ",profits and gains of business or profession ". Net receipt after deducting all the necessary expenditure of the trust (sic).

There is a broad agreement on this proposition. But still the contention for the Revenue is that the depreciation allowance being a notional income (expenditure ?) cannot be allowed to be debited to the expenditure account of the trust. This contention appears to proceed on the assumption that the expenditure should necessarily involve actual delivery of or parting with the money. It seems to us that it need not necessarily be so. The expenditure should be understood as necessary outgoings. The depreciation is nothing but decrease in value of property through wear, deterioration or obsolescence and allowance is made for this purpose in book keeping, accountancy, etc. In Spicer & Pegler's Book-keeping and Accounts, 17th Edn., pp. 44, 45 & 46, it has been noted as follows :



"Depreciation is the exhaustion of the effective life of a fixed asset owing to ' use ' or obsolescence. It may be computed as that part of the cost of the asset which will not be recovered when the asset is finally put out of use. The object of providing for depreciation is to spread the expenditure, incurred in acquiring the asset, over its effective lifetime; the amount of the provision, made in respect of an accounting period, is intended to represent the proportion of such expenditure, which has expired during that period. "

"At the end of its effective life, the assets ceases to earn revenue, i.e., the capital value has expired and the asset will have to be replaced or a substitute found provision for depreciation is the setting aside, out of the revenue of an accounting period, the estimated amount by which the capital invested in the asset has expired during that period. It is the provision made for the loss or expense incurred through rising the asset for earning profits, and should, therefore, be charged against those profits as they are earned. "

"If depreciation is not provided for, the books will not contain a true record of revenue or capital. If the asset were hired instead of purchased, the hiring fee would be charged against the profits; having been purchased the asset is, in effect, then hired by capital to revenue, and the true profit cannot be ascertained until a suitable charge for the use of the asset has been made. Moreover, unless provision is made for depreciation, the balance-sheet will not present a true and fair view of



the state of affairs ; assets should be shown at a figure which represent that part of their value on acquisition, which has not yet expired. "

In CIT v Indian Jute Mills Association [1982] 134 ITR 68, the Calcutta High Court, while constructing the expression " expenditure incurred " in s. 44A of the Act, observed :

"depreciation claimed shall include the expenditure incurred." There are only two recognised methods of accounting : (1) cash basis, and (ii) mercantile basis. Under the cash basis only cash transactions are recorded. It is only cash receipts and cash payments which find entries in the books of account. Mercantile system of accounting was explained by the Supreme Court in Keshav Mills Ltd. v. CIT [1953]23 ITR 230 at 230 in the following words :

“The mercantile system of accounting or what is otherwise known as the double entry system is opposed to the cash system of book keeping under which a record is kept of actual cash receipts and actual cash payments, entries being made only when money is actually collected or disbursed. That system brings into credit what is due, immediately it becomes legally due and before it, is actually received and it brings into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed.

It is not in dispute that if the mercantile system is followed, the depreciation allowance in respect of the trust property should be allowed.

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The depreciation if it is not allowed as a necessary deduction for computing the income from the charitable institutions, then there is no way to preserve the corpus of the trust for deriving the income. The Board also appears to have understood the " income " u/s. 11(1) in its commercial sense. The relevant portion of the Circular No. 5-P (LXX-6) of 1968, dated July 19, 1968, reads:

“Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word 'income' should be understood in its commercial sense, i.e., book income, after adding back any appropriations or applications thereof towards the purpose of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax u/s. 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent. of the latter, if the trust is to get the full benefit of the exemption u/s. 11(1). ”

This court thereafter referred to the circular/clarification dated 2nd February, 2012 by the CBDT, issued after decision of Kerala High Court in *Lisse Medical* (supra) and has expounded as under:-

“9. After the decision of the Kerala High Court in *Lisse Medical Institution vs. CIT* (supra), the Board issued a



fresh circular or clarification dated 02.02.2012 and has observed:-

“The view of the CBDT to be conveyed to the Court in this regard is as under:-

The Central Board of Direct Taxes is of the considered view that where an assessee has acquired an asset through application of income and has also claimed this amount as expenditure in its income expenditure account, depreciation on such asset would not be allowable to the assessee. Such notional statutory deductions like depreciation, if claimed as deduction while computing the income of “the property held under trust” under the relevant head of income, is required to be added back while computing the income for the purpose of application in the income expenditure account. This would imply that a correct figure of surplus from the trust property is reflected in the Income and Expenditure account of the trust to determine the income for the purpose of application under section 11 of the Income Tax Act. This would reduce the possibility of revenue leakage which may be a cause for generation of black money.”

10. We also note that the Kerala High Court, in fact, has noted the clarifications which were earlier issued by the Board in respect of 1968 circular. It is clear from the reasoning given by the Kerala High Court that they have not gone by the express language of Section 11(a) and have purposively interpreted the provision.”



7. Reference was once again made to the decision of the Supreme Court in *Escorts Limited* (supra) and provisions of Section 35(2B)(c) were quoted and it was observed that the language of the sub-clause (c) was clear and lucid but conspicuously different from section 11(1) of the Act. It has been observed in *Indian Trade Promotion Organisation* (supra) :-

11. Clause 'a' of Section 11(1) stipulates that income derived from property held under trust wholly for charitable or religious purposes is to be applied for such purposes in India and where such income is set aside or accumulated, it should not be in excess of 15% of the income from such property. Thus, there is an embargo and prohibition from accumulating or setting apart income derived from property held under trust beyond 15% of income from such property. If there is a violation of the said provision, proportionate income is deemed to be taxable and not exempt under Section 11(1). The language of the Section is peculiar and proceeds on its own wording. This aspect has been highlighted and pointed out in the judgment of *Commissioner of Income Tax vs. Society of The Sisters of St. Anne* (supra). Decision in the case of *Escorts Ltd.* (supra) was considered by the Delhi High Court in *DIT vs. Vishwa Jagriti Mission* (supra) decided on 29th March, 2012 and was distinguished for the following reasons.

“13. The judgment of the Supreme Court in *Escorts Limited Vs. Union of India* (supra) has been rightly held to be inapplicable to the present case. There are two reasons as to why the judgment cannot be applied to the present case. Firstly, the Supreme Court was not concerned with the case of a charitable trust/institution involving the question as to whether its income should be computed on commercial principles in order to determine the amount of income available for application to charitable purposes. It was a case where the assessee was carrying on business and the



statutory computation provisions of Chapter IV-D of the Act were applicable. In the present case, we are not concerned with the applicability of these provisions. We are concerned only with the concept of commercial income as understood from the accounting point of view. Even under normal commercial accounting principles, there is authority for the proposition that depreciation is a necessary charge in computing the net income. Secondly, the Supreme Court was concerned with the case where the assessee had claimed deduction of the cost of the asset under Section 35(1) of the Act, which allowed deduction for capital expenditure incurred on scientific research. The question was whether after claiming deduction in respect of the cost of the asset under Section 35(1), can the assessee again claim deduction on account of depreciation in respect of the same asset. The Supreme Court ruled that, under general principles of taxation, double deduction in regard to the same business outgoing is not intended unless clearly expressed. The present case is not one of this type, as rightly distinguished by the CIT(Appeals).”

12. We would like to reproduce Section 35 (2B)(c).

“Section 35(2B)(a)

(b).....

(c) Where a deduction allowed for any previous year under this sub-section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed in respect of that asset under [clause (ii) of sub-section (1)] of section 32 for the same or any subsequent previous year.”



13. The language of the sub-clause 'c' to Section 35(2B) is conspicuous and entirely different and wordings are clear and lucid. The language of Section 11(1), as noticed above, is distinguished and not worded in a similar manner. In *Escorts Ltd.* (supra), the Supreme Court was considering the said specific provision and the wordings therein. While dealing with the term "expenditure" and noticing the language it was held that no duplication or double deduction should be allowed towards depreciation in the same or subsequent year. Thus, the issue was decided against the assessee. Language of Explanation 1 to Section 43(1) can also be referred to and we notice that the language of the said explanation is absolutely different from the language used in Clause (a) to Section 11(1). Section 11(1)(a) is a peculiar provision which postulates application of income and it is not dealing with expenditure as such. The legislative desire is that money should be applied for the purpose of charity. In *Escorts Ltd.* (supra), the Supreme Court had observed that they were concerned with expenditure and since the entire costs of the capital assets had been allowed and had been set off against the business profit in five years or in one previous year, it was unconceivable that the depreciation should be allowed again on the same asset."

8. Decisions of other High Courts in *Commissioner of Income Tax versus Tiny Tots Education Society*, (2011) 330 ITR 21 (P&H) and *Commissioner of Income Tax versus Institute of Banking*, (2003) 264 ITR 110 (Bom.) in which the ratio as expounded in the case of *Vishwa Jagriti Mission* (supra) was accepted and affirmed, were noticed. Referring to the decision of the Kerala High Court in *Lissie Medical Institutions* (supra) it was observed:-



15. “Kerala High Court was also conscious of the said decision and the fact that Section 11(1)(a) had been interpreted in a different manner. It was in these circumstances that the Kerala High Court in the last portion of paragraph 6, as quoted above, has stated that the assessee would be entitled to write back depreciation and if done, the Assessing Officer would modify the assessment determining the higher income and allow recomputation of depreciation written back for the purpose of application of income for charitable purposes in future or subsequent years. This may lead to its own difficulties and problems as suddenly the entire depreciation written off would have to be added first and then in one year substantial application of income would be required. This may be impractical and would disturb the working of many a charitable institutions. The legal interpretation which has continued since 1984, if disturbed and implemented, would not appropriately resolved. Consistency and certainty is more appropriate.

16. The equally plausible and consistent interpretation of clause (a) of Section 11(1) of the Act is that income derived from property must be calculated as per the principles of the Act. The said clause is not a computation provision and does not disturb the “income” earned or available but postulates that the “income” as computed in accordance with the provisions of the Act to the extent of 86% must be applied. Application of income may include purchase of a capital asset. The said purchase is valid and taken into consideration for the purpose of ensuring compliance, i.e., application of money or funds and is not a factor which determines and decides the quantum of income derived from property held under trust. Computation of income is separate and distinct and has to be made on commercial basis by applying provisions of the Act.”

9. To our mind, therefore, the issue has been examined in depth and detail twice and thus there is no error in the impugned orders passed by the Tribunal. However, learned counsel for the Revenue has drawn our

attention to the decision dated 18th March, 2014 in ITA No. 322-323/2013
ITA No. 240/2014+ connected appeals



titled *Director of Income Tax (Exemption) versus Charanjiv Charital*

Trust, wherein it has been held:-

“30. So far as the claim of depreciation is concerned the decision of the Tribunal cannot be countenanced. The Tribunal has overlooked that the cost of the assets has already been allowed as a deduction as application of income, as held by the CIT (Appeals) as well as the assessing officer. It was their view that allowing depreciation in respect of assets, the cost of which was earlier allowed as deduction as application of income of the trust, would actually amount to double deduction on the basis of the ruling of the Supreme Court in *Escorts Ltd. vs. UOI* (supra). In respect of the additions to the fixed assets made during the previous year relevant to the assessment year 2006-07, the CIT (Appeals) held that since the cost of the assets was not allowed as a deduction by way of application of income, depreciation should be allow. The CIT (Appeals) has thus made a distinction between assets the cost of which was allowed as deduction as application of income and assets, the cost of which was not so allowed. The Tribunal has not kept this distinction in view, but has proceeded to rely upon a judgment of this Court in *DIT vs. Vishwa Jagrati Mission* (supra). In the judgment of this Court the question was whether the income of the assessee, which was a charitable trust, should be computed on commercial principles and if so, whether depreciation on fixed assets used for charitable purposes should be allowed as a deduction. This Court noticed that there was a consensus of judicial opinion on this aspect and held, after referring to those authorities as well as a circular of the CBDT issued on 19.07.1968, that while computing the income of the trust available for application for charitable purposes, depreciation on assets used for charitable purposes should be allowed. The point to be noticed is that in this judgment, this Court referred to and distinguished the judgment of the Supreme Court in *Escorts Ltd.* (supra) on the ground that in *Escorts* (supra), the Supreme Court



was concerned with a case where the deduction of the cost of the asset was allowed under Section 35(1) as capital expenditure incurred on scientific research and, therefore, no deduction for depreciation on the very same assets was held allowable under general principles of taxation, as it would amount to double deduction. The judgment of this Court in *DIT vs. Vishwa Jagrati Mission* reinforces the principle that if the cost of the asset has been allowed as deduction by way of application of income then depreciation on the same asset cannot be allowed in the computation of the income of the trust. The distinction has not been kept in view by the Tribunal which seems to have erroneously relied on the judgment of this Court to direct allowance of depreciation even in respect of assets, the cost of which has already been allowed as application of income. We accordingly hold that the Tribunal was not justified in directing the allowance of depreciation in respect of such assets.”

10. The aforesaid paragraph refers to the decision in the case of *Vishwa Jagrati Mission* (supra) but ratio was distinguished on the ground that in the said case the Court was concerned with computation of income of a charitable trust/institution on commercial principles and if so whether depreciation on fixed assets used for charitable purposes should be allowed as a deduction. The consensus of judicial opinion on the said aspect was referred to. It is noticeable that in *Charanjiv Charitable Trust* (supra) it stands observed that the Tribunal overlooked the fact that the cost of asset had been allowed as a “deduction” and thereafter depreciation was being claimed. The said case, therefore, appears to be a peculiar one wherein deduction as expenditure and depreciation was being claimed



simultaneously, while computing the taxable income under the head “profits and gains from business”. The said decision dated 18th March, 2014 does not refer to the decision in *Indian Trade Promotion Organisation* (supra) which was decided on 27th November, 2013. The judgment in the case of *Indian Trade Promotion Organisation* (supra) was not cited and referred to. The judgment in the case of *Charanjiv Charitable Trust* (supra) is authored by the same Judge, who has also authored the decision in the case of *Vishwa Jagriti Mission* (supra). It is obvious that in *Charanjiv Charitable Trust* (supra), the Division Bench could not have taken a different view on the legal ratio as interpreted in *Vishwa Jagriti Mission* (supra). Further, the decisions in the case of *Vishwa Jagriti Mission* and *Indian Trade Promotion Organisation* (supra) being prior in point of time would act as binding precedents and could not have been overruled or dissented from by a coordinate Division Bench.

11. By Finance (No. 2) Act of 2014, sub-section (6) to Section 11 stands inserted with effect from 1st April, 2015 to the effect that where any income is required to be applied, accumulated or set apart for application, then for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of an asset, the acquisition of which has been claimed as application of



income under this Section in the same or any other previous year. T legal position, therefore, would undergo a change in terms of Section 11(6), which has been inserted and applicable with effect from 1st April, 2015 and not to the assessment years in question. The newly enacted sub-section relates to application of income.

12. In these circumstances, we do not find any merit in the appeals in the case of Indraprastha Cancer Society, Abul Kalam Azad Islamic Awakening and in the case of M/s Sanskriti Educational Society (ITA No. 348/2014). Similarly, we do not think it is necessary and required that we should issue notice in the application for condonation of delay filed in the case of M/s Sanskriti Educational Society (ITA Nos. 463 and 464/2014) as on merits the Revenue is not entitled to succeed. In these appeals, the applications for condonation of delay shall be treated as dismissed and as a sequitur the appeals will be treated as dismissed.

(SANJIV KHANNA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

NOVEMBER 18th, 2014
VKR